1952.

File No. Drugs II/52 (R)

Legal Deptt.

B BRANCH

P.b (E) 1952

Subject:— Rules under the Drugs ~~Control~~ Act, 1940

File No. Drugs II/52(R)

Gen. 194 e.

30-8

Legal Department.

The Drug Controller has suggested the insertion of rules and 85A on the lines suggested by him in his note at page 25 under the following circumstances. The rules suggested are as follows :-

Draft Amendment for Rule 66-A

"Notwithstanding anything contained herein above, it shall be competent for the Licensing Authority to exercise full discretion while granting or renewing a licence in Form 20 or 21 or cancelling a licence in Form 20 or 21, if in his opinion the licensee or any other person associated with the management or sale of drugs is a person who has been previously convicted of any offence punishable with imprisonment under any Act, or he is a person who is by virtue of the licence in Form 20 or 21 that is granted to him or for which he has applied, likely to defeat the provisions of any Law in force in India."

Draft Amendment for Rule 85-A.

"Notwithstanding anything contained herein above it shall be competent for the Licensing Authority to exercise full discretion while granting or renewing a licence in Form 25 or 28, if in his opinion the Licensee, the applicant or any person associated with the management or manufacture of drugs, is convicted of any offence punishable with imprisonment under any Act or he is a person who is by virtue of the licence in Form 25 or 28 or renewal certificates in Form 26 granted to him or for which he has applied is likely to defeat the provision of any Law in force in India."

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In the linked file received, however, the Surgeon General has proposed deletion of the portion shown in red chalk in the above draft.

2. The District Superintendent of Police, Broach, brought to the notice of Civil Surgeon, that certain establishments in Broach City are selling spirituous medicinal and toilet preparations after obtaining a licence under the Drugs Act, 1940 even though they are not chemists and have no experience in medicine.

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The Civil Surgeon, Broach, enquired of the Drug Controller whether the licences of such establishments can be cancelled under rule 65 of the Bombay Drugs Rules. The Drug Controller through the Surgeon General obtained the opinion of the R.L.A. whether the licences can be cancelled for the reasons specified by the D.S.P. The Drug Controller in his report has stated that the said establishments probably have obtained the licences under the Drugs Act, 1940 with a view to selling those medicinal and toilet preparations which are likely to be misused for purposes other than medicinal. The R.L.A. in his opinion No. 350 Confl. dated the 10th April 1952 held that there is no provision in the rules for cancellation of a licence on the ground that the licencee is not a regular dealer in medicines. Please see also the opinion of the Secretary, Drugs Technical Advisory Board at 'A' on page 25. The Minister (Health) asked the department to consider whether the rules should not be amended to provide for cases like the ones at Broach. It is clear from the Minister's minute that the rule providing for the refusal or the cancellation of a licence is intended only in the case of those medicinal and

toilet preparations which are likely to be misused for purposes other than medicinal. Subsequent to the date of the above minute, there have been published two bills namely:-

(1) A Bill to amend the Bombay Prohibition Act 1949, and

(2) A Bill to provide for the Control of the possession sale and use of Drugs.

3. In the Bill to amend the Bombay Prohibition Act, power is taken under clause 3 to constitute a Board of Experts for the purpose of determining whether any medicinal or toilet preparation containing alcohol is or is not a medicinal or toilet preparation unfit for use as intoxicant liquor. Under clause 29 of the Bill, in the new section 59A proposed to be inserted, it is provided that no more alcohol shall be used in the manufacture of any medicinal or toilet preparation than the quantity necessary for extraction or solution of elements contained therein and for the preservation of the article, and in sub-section (2) of that section a prohibition is imposed that no person shall, -

(a) knowingly sell any article i.e. medicinal or toilet preparation for being used as an intoxicanting drink, or

(b) sell any such article under circum-

stances from which he might reasonably deduce the intention of the purchaser to use that for such purpose.

The penalty for contravening the provisions of section 59A have been provided in section 67A proposed to be inserted in clause 31 of the Bill.

4. In the second Bill, i.e., a Bill to provide for the control of the possession, sale and use of Drugs, the State Government has taken power to notify a drug if the State Government is satisfied that the drug is used in a manner injurious to health. In clause 4 of the said Bill the power is taken to a specify the maximum quantity of a notified drug which a person in his individual capacity or as a head of a Household may possessat any one time. Under clause 5(2) it is provided that the dispensing chemist shall not supply any notified drug in his possession to any person for a purpose other than bona fide medicinal purpose and except on a prescription issued by a Medical Practitioner. In clause 8 of the Bill thepower is taken to prohibit the disposal of any notified drugs except in such circumstances and under such condition as may be specified in the order.

5. From the relevant provisions specified above in the two Bills which have since been passed by the legislature it is clear that the

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said two Bill are intended to cover those medicinal or toilet preparations which are likely to be misused for purposes other than medicianl. In view of these Bills it may not be necessary to amend the Bombay Drugs Rules, 1946 in the manner suggested by the Drug Controller since the object is not to make use of the proposed new rules in respect of any drug other than those which are likely to be misused for purposes other than medicinal. The Local Self Government and Public Health Department should therefore wait till the aforesaid two Bill have been published as Acts and then examine whether it will be necessary to insert new rules 66A and 85A in view of the provisions of the Acts.

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O.O.

Additional Secretary to Government

U.R. to L.S.G.& P.H.D.No. 895/B Confl.

dated 8th September 1952.

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